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**In The
Supreme Court of the
United States**

OCTOBER TERM, 1982

BARRY DEAN HORTON,
PETITIONER,

v.

**JOSEPH MARTIN, Warden,
Central Correctional Institute,
and the Attorney General
of the State of South Carolina,**
RESPONDENTS.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

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April 4, 1983

Questions Presented

1. Whether the post-conviction relief court violated the Petitioner's Constitutional right to Due Process of Law when, after declaring the search warrant to be constitutionally defective, the post-conviction relief court, without notice to the Petitioner, thereafter allowed the State to present new, novel, and alternative theories to the search warrant requirement even though the State had not previously raised, advanced, plead, argued, nor relied upon any alternative theory or upon any exception to the search warrant requirement at any prior stage of the criminal process.

2. Whether the Petitioner is denied the Due Process of Law and the effective Assistance of Counsel when appellate counsel fails to preserve the critical issue on direct appeal.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

This is a Petition of Barry Dean Horton for Writ of Certiorari to review the judgement and order made by the Court of Appeals for the Fourth Circuit affirming the judgement against Petitioner entered by the United States District Court for the District of South Carolina on August 21, 1981, which denied Petitioner's application for habeas corpus relief.

A copy of the affirming judgement and of the opinion of the Court of Appeals for the Fourth Circuit, which are as yet unreported, are attached. (Appendix A.)

Jurisdiction

The District Court had jurisdiction in this case under Title 28 U.S.C. Section 2254.

The Circuit Court had jurisdiction under Title 28 U.S.C. Section 1291.

This Court has jurisdiction under Title 28 U.S.C. Section 1254 (1) to review the judgement in question.

Statement of the Case

On May 16, 1977, the Grand Jury of Pickens County returned an Indictment for murder against Petitioner. On May 22, 1977, the Grand Jury of Pickens County returned an Indictment for Leaving the Scene of an Accident against Petitioner, the State alleging that both indictments arose from the death of Ralph Alexander, found shot to death along Highway 124 in Pickens County on January 19, 1977.

Prior to the trial, Petitioner filed a Motion to Suppress the evidence seized on January 21, 1977, based on the grounds that the search warrants were illegal. These motions were denied by the trial judge as it was decided that the Search Warrants were proper.

Thereafter, Petitioner entered a plea of not guilty and a trial by jury was held. On May 24, 1977, a verdict of guilty to murder and leaving the scene of an accident was returned. Petitioner's motions for a new trial and for judgement of acquittal were denied; whereupon, Petitioner was sentenced to life imprisonment for murder and thirty (30) days for leaving the scene of an accident.

Thereafter, Petitioner filed a Notice of Appeal. On August 31, 1978, the Supreme Court of South Carolina reversed Petitioner's conviction. On Petition for Rehearing, the South Carolina Supreme Court withdrew its former opinion and thereafter affirmed Petitioner's conviction.

Thereafter, on January 26, 1979, the Petitioner made application for Post-Conviction Relief. A hearing was held on April 23, 1979, before the Honorable James H. Price. Judge Price found that the Petitioner had met his burden and proved the search warrant was constitutionally defective, however, after the Petitioner had rested his case and without notice to the Petitioner, Judge Price required the State to present alternative theories to the search warrant requirement and Judge Price then ruled that Petitioner either consented to the search and seizure or the car was subject to seizure upon an open view inspection.

Thereafter, Petitioner filed a Notice of Appeal. On April 9, 1980, the Supreme Court of South Carolina dismissed the Petitioner's appeal pursuant to Supreme Court Rule No. 23.¹

On September 18, 1980, the Petitioner filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina. The petition was denied and summary judgement entered for the Respondents by the Honorable J. Robert Martin, Jr., on August 20, 1981. Thereafter, Petitioner filed a Notice of Appeal.

On January 6, 1983, the Court of Appeals for the Fourth Circuit affirmed, with modifications, the decision of the District Court denying Petitioner's Writ of Habeas Corpus.

Statutes and Constitutional Provisions Involved

The relevant constitutional and statutory provisions are printed in Appendix B; they are:

¹ Rule 23 states: After the return in a criminal action shall have been docketed in the Court, the appeal may be dismissed, or the judgement appealed from affirmed, reversed or other appropriate relief granted, at any subsequent stage of the appeal, if all justices of the Court conclude that the grounds of the appeal are manifestly without merit or that the judgement below was clearly erroneous or clearly defective.

Amendments IV, VI, and XIV to the United States Constitution; Section 17-27-80 Code of Laws of South Carolina (1976).

Statement of the Facts

This Petition for Writ of Certiorari involves a trial in which Barry Dean Horton was convicted of murder on evidence seized pursuant to search warrants declared constitutionally defective by the state post-conviction relief court two years after the original trial in which evidence seized pursuant to one of the warrants was introduced against the Petitioner. Petitioner was denied post-conviction relief, however, when the court, after the presentation of the evidence had been concluded, and the search warrant declared constitutionally defective, required the State's Attorney to raise alternative theories to the search warrant requirement.

It is the Petitioner's position that because of the tainted, illegal and questionable evidence being introduced against him at trial, pursuant only to the constitutionally defective warrant, that the post-conviction court violated Petitioner's constitutional right to procedural due process, notice, and opportunity to defend, thereby requiring that his conviction be set aside with instructions that upon retrial, the illegal evidence be excluded.

On January 19, 1977, at approximately 11:45 P.M., Ralph Alexander was shot to death in Pickens County, South Carolina. In the early morning hours of January 21, 1977, Deputy Wilton Lee, Pickens County Deputy, went to the office of Greenville County Magistrate, H. V. Lollis and submitted two affidavits for search warrants based upon information allegedly submitted to affiant by a confidential informant. These affidavits resulted in the issuance of two search warrants to Pickens County Deputy Lee by Greenville County Magistrate Lollis, despite the fact that Deputy Lee was outside his jurisdiction. One of the search warrants authorized

the search of Barry Horton's car and the seizure of visible light blue paint from its right front bumper.

Deputies of the Pickens County Sheriff's Department, thereafter executed the warrants in Greenville County. At this point, officers from Greenville County and the South Carolina Highway Patrol assisted with the search and seizure of several items, including two shotguns and several shotgun shells, from Horton's housetrailer. No items seized during the search of the housetrailer were introduced into evidence at trial. No visible light blue paint was seized from the right bumper of Horton's car, however, the car was impounded and removed to Brissey's garage. The car remained at the garage for five days, until Deputy A. L. Dalton, Identifications Officer for Pickens County Sheriff's Department, received it for processing. Thereafter, Deputy Dalton dismantled the entire front end of Horton's automobile, placed it, along with the back bumper, tailgate, and license plate of the decedent's truck, into the back of a police cruiser and transported these items, and others to the F.B.I. laboratory in Washington, D.C. There is no showing that these items were separated or protected from each other during this four hundred mile trip.² The State's case, however, was based entirely upon the fact that the front end of the Horton vehicle and the back of the Alexander vehicle came into contact with each other at some point in time.

On January 29, 1977, Barry Horton was arrested for murder, pursuant to an arrest warrant issued by Magistrate W. L. Fortner of Pickens County, South Carolina. A preliminary hearing was held on April 20, 1977. During the course of the preliminary hearing, with regard to the search warrants, Deputy Lee testified inconsistently that he did not have a confidential informant, that, the confidential informant was

² Horton's trial counsel did not pursue the possibility that the front end of the Horton vehicle came in contact with the tailgate and bumper of the Alexander vehicle during this four hundred mile trip to Washington.

a female, and finally, that, the confidential informant was a male deputy sheriff for Greenville County. On January 15, 1979, Deputy Lee further identified Deputy Keith Willoughby of the Greenville County Sheriff's Department as the confidential informant in both affidavits for the search warrants in this case. At trial, however, Deputy Willoughby testified that he had not discussed this case with the Pickens County Sheriff's Department until a week, ten days, or two weeks after the seizure of the vehicle had taken place. He also testified at the post-conviction relief hearing, contrary to Deputy Lee, that he had never given Deputy Lee any information regarding a shotgun at Barry Horton's housetrailer.

On May 16, 1977, the Grand Jury of Pickens County returned an Indictment for murder against Horton. On May 18, 1977, Jack H. Lynn, Attorney for Horton, filed a Motion to Suppress the Evidence seized on January 21, 1977, based on the grounds that the search warrants were illegal. On May 22, 1977, the day before trial, the Grand Jury of Pickens County returned an Indictment for Leaving the Scene of an Accident against Horton. The Motion to Suppress the evidence seized pursuant to the warrants was argued on May 23, 1977, before the Honorable John T. Gentry. After a lengthy hearing, the Motion to Suppress was denied and the Court allowed various items, seized pursuant to the search warrant for the automobile, into evidence.

Barry Horton has steadfastly maintained that he is innocent of the charges. He took the stand, testified in his own behalf, and introduced the defense of alibi. Two disinterested witnesses³ verified his whereabouts at the time of the crime. Upon completion of the trial on May 24, 1977, the case was submitted to the jury and a verdict of guilty of murder and leaving the scene of an accident was returned.

The conviction was appealed to the Supreme Court of South Carolina. The appeal attempted to challenge the trial

³ Clarence McEachern and Kenneth Ramsey

court's ruling which failed to suppress all evidence seized by authority of the search warrant for the automobile. However, appellant counsel placed the affidavit and the search warrant for the shotgun into the transcript of record and not the affidavit and search warrant for the automobile. Both were virtually identical. Thereafter, the South Carolina Supreme Court reversed Horton's conviction: "Because the affidavit contained insufficient underlying facts to allow the magistrate to reach an independent decision on the presence of a shotgun in Petitioner's trailer." Opinion No. 20759, Filed August 31, 1978. However, on Petition for Rehearing, the South Carolina Supreme Court reversed itself and affirmed Horton's conviction: "... as any items seized pursuant to this warrant were not introduced into evidence, appellant's exception to the sufficiency of the affidavit is without merit." Opinion No. 20759, Filed October 10, 1978, *State v. Horton*, 248 S.E. 2d 263 (1978). The question of the constitutionality of the search and seizure of Horton's automobile was not addressed by the South Carolina Supreme Court, due to the failure of appellate counsel to preserve and present this question to the Court.

On January 30, 1979, Horton made application for post-conviction relief. The State made Return to the application on April 17, 1979.

On April 23, 1979, a hearing on the application was convened before The Honorable James H. Price, Jr. Judge Price found that the search warrant was, "... not constitutionally sound." The court, however, over Horton's counsel's objection, and without notice to Petitioner, thereafter allowed the State to raise exceptions to the warrant requirement and found that Horton either consented to the search or the automobile was subject to seizure upon an "open view" inspection of it. Further, the Court found that Barry Horton's lawyer provided adequate and effective assistance of counsel on appeal despite the fact that the lawyer appealed the wrong

search warrant and issue. The Court further found that Horton's constitutional rights were not violated by the Solicitor's closing argument wherein the Solicitor vouched for the state's witnesses telling the truth. The Court, thereafter, remanded the petitioner to prison.

Notice of Intent to Appeal to the Supreme Court of South Carolina was served on June 20, 1979. The Supreme Court of South Carolina dismissed the appeal pursuant to Supreme Court Rule 23 on April 9, 1980.

On September 18, 1980, Horton filed a Petition for a Writ of Habeas Corpus in the United States District Court for the District of South Carolina. The petition was denied and summary judgement entered for the Respondents by Order of the Honorable J. Robert Martin, Jr. on August 20, 1981. Thereafter Horton filed a Notice of Appeal to the Circuit Court of Appeals for the Fourth Circuit.

On January 6, 1983, the Circuit Court affirmed, with modifications, the decision of the U.S. District Court denying Horton's Petition for Writ of Habeas Corpus.

Reasons for Granting the Writ

While Petitioner considers all questions presented herein substantial, the most important constitutional issue presented by this Petition is: Whether the Government should be permitted the opportunity to present exceptions to the warrant requirement at the post-conviction stage of a criminal proceeding after the warrant has been declared constitutionally defective based upon the fact that there was no probable cause in the first instance for the issuance of the warrant(s). Integrally involved in the above question is the question of Petitioner's right to effective assistance of counsel on appeal, for were it not for counsel's gross failure to appeal the proper issue and the proper search warrant in Petitioner's direct appeal the post-conviction court would not have been in the posture to receive previously unoffered

testimony by the State, while continually placing the burden on the Petitioner to refute said new theories and exceptions to the defective warrant. A great deal of confusion and uncertainty exists in the lower courts and among the practitioners regarding the right to effective representation of counsel on appeal, the authority of the post-conviction relief court and the scope of the Uniform Post-Conviction Relief Statute in the area of the Fourth and Fourteenth Amendments (Search and Seizure).

Argument

1. WHERE THE STATE RELIES UPON A CONSTITUTIONALLY DEFECTIVE SEARCH WARRANT THROUGHOUT THE PRELIMINARY HEARING, TRIAL, APPEAL AND POST-CONVICTION RELIEF HEARING, IT CANNOT THEREAFTER RELY UPON AN ALTERNATIVE THEORY OR GOOD FAITH EXCEPTION TO THE SEARCH WARRANT REQUIREMENT IN ORDER TO JUSTIFY A SEARCH AND SEIZURE PREVIOUSLY CONDUCTED PURSUANT ONLY TO THE INVALID WARRANT.

The State, in this case, relied solely on an invalid search warrant to justify the search and seizure of the Petitioner's automobile. The warrant was obtained without probable cause and through intentional misrepresentations by the State's affiant, which constitutionally invalidates the warrant under *Franks v. Delaware*, 438 U.S. 154 (1978). The State relied upon the invalid warrant throughout the Petitioner's trial, appeal, rehearing and post-conviction relief proceeding until the judge at the post-conviction hearing declared the search warrant unconstitutional, on the basis that probable cause did not exist upon which to issue the warrant. At that point, it was incumbent upon the court to suppress the evidence which was seized in violation of the Fourth and Four-

teenth Amendments. *Mapp v. Ohio*, 367 U.S. 643 (1961).

The post-conviction court, however, over the objection of Petitioner's counsel and without notice to Petitioner, urged the State to present some alternative theory or exception to the warrant requirement to justify the search and seizure of the Petitioner's automobile. This procedure is clearly erroneous.

The minimal requirements of procedural due process consists of notice and opportunity to defend. *Mullane v. Central Hanover Bank*, 339 U.S. 306 (195___). These minimal due process requirements were denied the Petitioner in this case. The Petitioner, in a post-conviction proceeding, bears the burden of proof. In order to prepare his case, the Petitioner must be made aware of any affirmative defenses the State seeks to rely upon for its case. It is well settled that certain affirmative defenses are waived if not pleaded. In the instant case, the State made Return to the Petitioner's Application for Post-Conviction Relief and answered solely by way of denial. The Petitioner was never placed on notice that the State would seek to rely on any theory other than the search warrant to justify the search and seizure of the Petitioner's automobile.

In *Bumper v. North Carolina*, 391 U.S. 543 (1968), this court stated that a search conducted in reliance upon a warrant cannot later be justified upon an exception to the warrant requirement if it turns out that the warrant was invalid. In light of this opinion by the court, Petitioner could not reasonably have anticipated that he would have to refute a theory on which the State had never previously plead or relied. When the court ruled that the warrant was defective, it was required to suppress the illegally seized evidence and grant the Petitioner relief. Instead, the court, over objection, continued the hearing. In effect, the post-conviction hearing became a trial in which the state was not required to plead or prove, beyond a reasonable doubt, its exceptions to the invalid

search warrant. The police officer who presented said exceptions to the warrant had never previously testified at any hearing or the trial. The Petitioner not having been given notice or the opportunity to prepare rebuttal to these exceptions or this new testimony or theories, was, however, still required to bear the burden of proof.

The Uniform Post-Conviction relief Statute, as applied by the South Carolina court, is repugnant to the Due Process clause of the Fourteenth Amendment. The question that must be answered by this court is whether Due Process of Law is afforded when a Petitioner for post-conviction relief is denied a full and fair hearing due to lack of notice and the opportunity to defend. This court must further declare that the practice of allowing ex post facto justification of searches and seizures conducted pursuant to an invalid warrant to be violative of the Fourth and Fourteenth Amendments and violative of the burden and standard of proof required in a criminal proceeding.

2. WHERE COUNSEL FOR THE PETITIONER FAILS TO PRESERVE THE CRITICAL ISSUE ON APPEAL THE PETITIONER IS DENIED DUE PROCESS AND THE EFFECTIVE ASSISTANCE OF COUNSEL.

The Circuit Court of Appeals' determination that the Petitioner was not denied the effective assistance of counsel on appeal and that he was not prejudiced by appellant counsel's failure to preserve the critical issue of the illegal search and seizure of the Petitioner's automobile on appeal are clearly erroneous and violative of the Petitioner's rights under the Sixth and Fourteenth Amendments.

The Petitioner's appellate counsel testified at the post-conviction hearing regarding his handling of the Petitioner's appeal . . . "I blew it!" because the appellant's brief did not address the issue of the illegal seizure of the Petitioner's automobile. The Petitioner was denied a full and fair appeal due to the gross ineffectiveness of appellant counsel. The

post-conviction court held the failure of counsel to perfect the issue of the illegal seizure on appeal did not constitute the ineffective assistance of counsel.

There is great confusion in this State, as well as other jurisdictions, regarding what is the proper standard for judging the adequacy and effectiveness of counsel at trial and on appeal. The South Carolina Supreme court still clings to the archaic "farce and mockery" test to determine the adequacy of counsel, *Crosbys v. South Carolina*, 241 S.C. 40 (1962), even though the Fourth Circuit Court of Appeals, in *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977) has adopted a "reasonably competent attorney" standard.

The minimum proper remedy in the instant case should have been for the lower court to have afforded Petitioner a new appeal, wherein he could have asserted the issue adversely affected by his initial counsel's ineffective stewardship. See: *Commonwealth v. Sullivan*, 371 A 2d 468, 476 (1977) and cases cited therein.

It is necessary for this court to resolve the confusion surrounding the standard for determining the adequacy and effectiveness of counsel on appeal and the proper remedy when ineffective stewardship is present. As long as this uncertainty remains, the constitutional right to the effective assistance of counsel will continue to be violated, as were the Petitioner's rights in the instant case. The proper standard must be the "reasonably competent attorney" standard, as set forth in *Marzullo. id.*, and the proper minimum remedy must be a new appeal wherein petitioner can assert the issue adversely affected by his initial counsel's ineffective stewardship, *Sullivan, id.* However, until this court rules on the standard for adequacy and effectiveness of counsel, on appeal, South Carolina will continue to suppress the constitutional rights of individuals and will require only the minimal assistance of counsel and grant no relief, where ineffectiveness is found, all of which violates the Sixth and Fourteenth Amendments.

Conclusion

Petitioner respectfully submits that a review of the record will indicate that this Petition for Writ of Certiorari should be granted and that the Judgement of the Circuit Court affirming, with modifications, the Judgement of the District Court should be set aside and the judgement of conviction, from the State of South Carolina, reversed.

Respectfully submitted,

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Columbia, South Carolina 29210
Attorney for Petitioner

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APPENDIX

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 82-8039

**BARRY DEAN HORTON,
APPELLANT,**

v.

**JOSEPH MARTIN, Warden, Central
Correctional Institute, and
the Attorney General of the
State of South Carolina,
APPELLEES.**

Appeal from the United States District Court for the District of South Carolina, at Columbia. J. Robert Martin, Jr., District Judge.

Submitted: November 8, 1982 Decided: January 6, 1983

Before PHILLIPS and CHAPMAN, Circuit Judges, HAYNS-
WORTH, Senior Circuit Judge.

(Barry Dean Horton, Appellant Pro Se. Emmet H. Clair,
Deputy Attorney General, for the Appellees.)

PER CURIAM:

Barry Dean Horton, convicted by a South Carolina jury of murder and hit-and-run driving, brought this petition for habeas corpus relief pursuant to 28 U.S.C. § 2254.

Horton initially alleges constitutional error in the trial court's admission into evidence of certain paint scrapings and other evidence seized from the exterior of his automobile which, he claims, was seized in violation of the Fourth Amendment. We agree with the district court's conclusion that, pursuant to the rule in *Stone v. Powell*, 428 U.S. 465 (1976), further litigation of this issue is barred.

Stone holds that collateral attack of a state conviction on Fourth Amendment claims is barred where the petitioner had a "full and fair opportunity" to litigate those claims at the state level. To determine whether Horton had that opportunity, we must first determine whether South Carolina law afforded him procedures to raise his Fourth amendment challenge. *Doleman v. Muncy*, 579 F.2d 1258 (4th Cir. 1978). Our review of the record shows that such procedures do exist. Horton first challenged the search and seizure before the trial court. That issue was appealable to the state supreme court. It further was subject to review in collateral proceedings, which themselves were appealable to the state supreme court.

While the above procedures appear sufficient on their face to satisfy the *Stone* criterion, Horton has brought two claims which, if proved, would establish that his ability to litigate the Fourth amendment claim was impaired. In this context we must examine his claims of ineffective assistance of counsel and denial of due process at the state post-conviction hearing.¹

¹ The district court dismissed this claim as not exhausted. 28 U.S.C. § 2254(b). This finding, if correct, would require that the entire petition be dismissed. *Rose vs. Lundy*, 455 U.S. —, 50 U.S.L.W. 4272 (March 3, 1982). Our review of the record reveals that the claim was presented in full to the South Carolina Supreme Court, albeit under a different label. This is sufficient to satisfy the exhaustion requirement and to permit us to review the petition.

Horton complains that his defense counsel failed to appeal the trial court's adverse ruling on his Fourth Amendment claim. Factually, this is correct. We need not decide, however, whether this failure, if unremedied, would have impaired his ability to obtain a full and fair hearing on this issue,² for Horton's claim was pursued ably by counsel in his state petition for post-conviction relief. The adverse ruling at that proceeding then was appealed to, and affirmed by, the South Carolina Supreme Court. Thus, Horton benefited from substantially the same opportunity to litigate his claim that he would have received had the defense attorney originally pursued his claim.

Horton also complains that the state was permitted to rely on the plain view doctrine as an alternate ground to support the admission of the contested evidence, despite having failed to take that position in its written pleadings, when it appeared from the evidence that the warrant was defective. He further alleges that the state judge assumed a prosecutorial role and denied Horton a fair hearing. We find both of these challenges unavailing. We know of no doctrine to preclude the court from basing his ruling on alternative grounds which appear plainly on the record. The record fails to support the latter allegation.

We additionally have examined Horton's ineffective assistance and due process claims in their own right to determine whether, in and of themselves, they would warrant habeas corpus relief. They do not. Insofar as Horton's Fourth Amendment claim was ably pursued in state collateral proceedings, any Sixth Amendment violation in the earlier failure of his defense counsel to pursue the claim was adequately remedied. See *Galloway v. Stephenson*, 510 F. Supp. 840 (M.D.N.C. 1981). That claim is therefore moot. The attack on the constitutional adequacy of his post-conviction proceeding also is unavailing, as it would not establish the

² See *Sallie v. North Carolina*, 587 F.2d 636 (4th Cir. 1978).

constitutional invalidity of the underlying criminal conviction. *Noble v. Sigler*, 351 F.2d 673 (8th Cir. 1965); *Pierce v. Oklahoma*, 436 F. Supp. 1026 (W.D. Okla. 1977); *Stokley v. Maryland*, 301 F. Supp. 653 (D. Md. 1969).

Horton's last claim is that the state's final argument, wherein the prosecutor personally vouched for the credibility of his witnesses, deprived him of due process of law. While this practice is not permitted in federal courts, *see, e.g., United States v. Morris*, 568 F.2d 396 (5th Cir. 1978), and is generally discouraged at all levels, *see Standards Relating to the Prosecution Function*, § 5.8 (b) (1971), it will not warrant habeas corpus relief from a state conviction unless the remarks are so egregious as to render the entire proceedings fundamentally unfair. *Grundler v. North Carolina*, 283 F.2d 798 (4th Cir. 1960); *see also Soap v. Carter*, 632 F.2d 872 (10th Cir. 1980); *Hayton vs. Egeler*, 555 F.2d 599 (6th Cir. 1977). The remarks in this case do not violate that standard.

Because the dispositive issues have recently been decided authoritatively, we dispense with oral argument. The certificate of probable cause is denied. The appeal is dismissed.

APPENDIX B

Constitutional Provisions

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment XIV. (adopted 1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Code of Laws of South Carolina (1976)

Section 17-27-80. Hearing on application; final judgment.

The application shall be heard in, and before any judge of, a court of competent jurisdiction in the county in which the conviction took place. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings are available to the parties. The court may receive proof by affidavits, depositions, oral testimony or other evidence and may order the applicant brought before it for hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.